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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON
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9 WILLIAM C. FISHER, a single person, on
10 behalf of his minor child, L.F.,

11 Plaintiffs,

12 v.

13 STATE OF WASHINGTON;
14 WASHINGTON STATE DEPARTMENT
15 OF SOCIAL AND HEALTH SERVICES;
16 WASHINGTON DEPARTMENT OF
17 CHILD PROTECTIVE SERVICES;
18 DIVISION OF CHILDREN AND
19 FAMILY SERVICES; CLIFF PETRIE;
20 FELEISHA WRIGHT; and JOHN/JANE
DOES 1-10,

Defendants.

NO. 2:16-cv-00108-SAB

**ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

21 Plaintiff William Fisher (Fisher) filed a Complaint on April 4, 2016 on
22 behalf of himself and his minor child, L.F alleging violations of 42 U.S.C. § 1983
23 and negligence. ECF No. 1. Defendants moved for summary judgment in all
24 respects. A hearing was held on February 10, 2017, in Spokane, Washington.
25 Plaintiff was represented by Douglas Phelps. Defendants were represented by
26 Jarold Cartwright. Based on the foregoing reasons, the Court **grants** Defendants'
27 Motion for Summary Judgment.
28

**ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT +1**

FACTS

The relevant facts are largely undisputed. Fisher and Sabrina McCulley (McCulley) were married on February 25, 2012. On July 20, 2012, McCulley, six months pregnant at the time, disappeared while Fisher was working in North Dakota. On October 10, 2012, L.F. was born to McCulley in Spokane, Washington; L.F.'s father was not identified on the birth certificate. Following L.F.'s birth, McCulley maintained that Jeremiah Martin (Martin) was the biological father of L.F., denying Fisher's paternity. However, Fisher is identified as the legal father of L.F. in a subsequent Dependency Petition filed in Spokane County Superior Court. ECF No. 14-3.

On April 8, 2013, the Department of Social and Health Services (DSHS) received a report that McCulley had attempted suicide by overdosing on medication. ECF No. 14-3. L.F. was left with McCulley's live-in boyfriend, Martin, who has an extensive history with Child Protective Services (CPS), and concerns were expressed about his ability to care for the child. *Id.* After this referral, Nadean Roper (Roper) arrived at the McCulley/Martin home to investigate the report and found police cars outside the home. ECF No. 16. Police officers were attempting to serve a temporary custody order that Fisher had obtained for L.F., but after finding a valid no-contact order that McCulley had against Fisher, the officers refused to enforce either order until the confusion was resolved. *Id.* At some point that day, Roper received a call from Spokane County Superior Court Commissioner Tony Rugel, who had signed the temporary parenting plan for Fisher; Commissioner Rugel expressed concerns regarding L.F.'s safety. *Id.* Thus, Commissioner Rugel directed Roper to remove L.F. from the McCulley/Martin home pending a subsequent shelter care hearing. *Id.*

On April 9, 2013, the court issued an order authorizing L.F. to be taken into custody and placed in shelter care until a hearing could be held on April 11, 2013. *Id.* Roper filed a Dependency Petition that same day and placed L.F. in the

1 Clifford Petrie (Petrie) foster home. The Petition alleged that L.F. was dependent
2 according to Wash. Rev. Code. § 13.34.030(6) stating that “the child is abused or
3 neglected as defined in Chapter 26.44 RCW,” and that “the child has no parent,
4 guardian or custodian capable of adequately caring for the child, such that the
5 child is in circumstances which constitute a danger of substantial damage to the
6 child’s psychological or physical development.” ECF No. 14-3. The Petition
7 referenced the aforementioned suicide attempt by McCulley and Martin’s
8 extensive CPS history. The Petition also contained allegations that McCulley had
9 reported that there had been domestic violence throughout her relationship with
10 Fisher and that she was forced into the marriage against her will. *Id.* McCulley
11 wrote a letter stating that Fisher has connections to white supremacy groups and
12 refused to allow her to leave or to have contact with her family. *Id.* The Petition
13 further stated that Fisher has a felony criminal history and that he was last arrested
14 in January 2013 after failing to comply with requirements for a Driving Under the
15 Influence conviction. The Petition likewise references that a no-contact order
16 protecting McCulley and her children from Fisher are in place. *Id.*

17 On April 11, 2013, Spokane County Superior Court Judge John O. Cooney
18 conducted a Shelter Care Hearing, at which Fisher and his attorney attended. ECF
19 No. 14-14. Judge Cooney found that the risk of imminent harm to L.F. “establishes
20 reasonable cause for the continued out-of-home placement of the child pending the
21 fact finding hearing” and that “[r]eturning the child to the home would seriously
22 endanger the child’s health, safety, and welfare. *Id.* Judge Cooney ordered L.F. to
23 be placed in shelter care because “there is reasonable cause to believe [that] the
24 child has no parent, guardian, or legal custodian to provide supervision or care for
25 such child.” *Id.* Judge Cooney further found that a relative or suitable person was
26 not available or willing to care for the child. *Id.* Specifically, Judge Cooney found
27 that “[r]elease of the child to Mr. Fisher would put the child at serious risk of
28 substantial harm based on allegations of domestic violence, criminal history + the

1 fact that placement in Idaho would be unsupervised.” *Id.* Fisher was permitted
2 supervised visitation two times per week for two hours. Paternity testing was
3 ordered to determine L.F.’s biological father and Fisher was ordered to participate
4 in services for chemical dependency, random UA testing, and a parenting
5 assessment. *Id.*

6 Between May 2013 and July 2013, the court continued L.F.’s shelter care
7 pending final hearing three times. ECF No. 14. During this time, Fisher had been
8 participating in some of the required services, but informed social worker Faleisha
9 Wright (Wright) that he would not participate in domestic violence counseling. *Id.*
10 The contested shelter care hearing was held on July 9, 2013, and subsequently
11 continued for a second day due to time constraints. Fisher, upset with the
12 continuance, contacted Wright to request her supervisor’s phone number stating
13 that he was “going to change more than the court order.” ECF No. 18. On July 30,
14 2016, Fisher emailed Wright stating that he would not be “doing any treatments
15 other than parenting. It [(the hearing)] was invalid and biased.” *Id.* At the
16 continued hearing on August 27, 2013, Fisher discharged his appointed attorney
17 and proceeded pro se. ECF No. 14-11.

18 At the conclusion of the hearing, Spokane County Superior Court
19 Commissioner Val Jolicoeur entered an Order of Dependency and Order of
20 Disposition as to the father of L.F., Fisher. Commissioner Jolicoeur found that
21 dependency had been established and that no parent or guardian was available to
22 care for the child because manifest danger existed that the child would suffer
23 serious abuse or neglect if not removed from the home. ECF No. 14-9.
24 Specifically, the Order noted that reasonable efforts to eliminate the need to
25 prevent or remove L.F. from the home were unsuccessful because (1) the health,
26 safety, and welfare of L.F. could not be adequately protected in the home, and (2)
27 Fisher refused to complete the offered services, which prevented L.F.’s possible
28 return home. *Id.* Fisher was ordered to participate in counseling to address anger

1 management and domestic violence, family therapy, and parenting training. *Id.*
2 The Order was entered over Fisher's objection. *Id.*

3 On November 12, 2013, a review hearing was held and a Permanency
4 Planning Hearing Order was entered ordering continued out-of-home placement in
5 foster care. ECF No. 14-2. Specifically, the Order noted that Fisher refused to
6 comply with the ordered inpatient treatment, random UA testing, mental health
7 treatment/individual counseling, and anger management and/or a domestic
8 violence assessment. *Id.* The Order was subsequently affirmed but revised with
9 regard to participation in domestic violence and chemical dependency treatment.
10 On January 15, 2014, an order was entered directing L.F.'s transition home to
11 Fisher within 30 days, and placement occurred on February 7, 2014. ECF Nos. 14-
12 12, 14-13. On August 6, 2014, L.F. was permanently placed with Fisher. ECF No.
13 14-13.

14 During placement in the Petrie foster home, L.F. progressed well. On
15 September 9, 2013, the foster parents took L.F. to doctor because she had been
16 experiencing a fever and rash. The initial diagnosis was Scarlet Fever and a
17 variation of strep throat. L.F. was treated with antibiotics. Later, the foster family
18 returned to the doctor because L.F. had not recovered. It was determined that L.F.
19 had developed Methicillin Resistant Staphylococcus Aureus (MRSA) and the
20 course of antibiotics was changed. The Petries informed Wright that L.F. had a
21 "staph infection," which they believed was caused by her getting stung by a bee.
22 Wright was not made aware that L.F. was diagnosed with MRSA. Subsequently,
23 Fisher called Wright and confronted her about supposedly lying to him about
24 L.F.'s diagnosis.

25 Fisher does not dispute these facts, but adds that placement with his sister in
26 Idaho was considered and approved, yet the child was placed with the Petries
27 instead. ECF No. 20. L.F. was ultimately not placed with Fisher's sister due to
28 how far away she lived and concerns that placement in Idaho would interfere with

1 both parents' ability to engage in services and make progress if the child was a
2 significant distance away. ECF No. 18. Fisher also contends that the Petrie home
3 was licensed and authorized for placement of two children, however, when Wright
4 visited the Petrie home on July 18, 2013, there were three foster children in the
5 home and no action was taken. ECF No. 20. Defendant points to the Declaration of
6 Wright which contains an entry on July 18, 2013 at 7:11 a.m. that "health and
7 safety completed in foster home. Present at visit were foster mom, [redacted] and
8 two other foster children. ECF No. 18. Additionally, it is undisputed that Petrie
9 was licensed to provide care to two children. ECF No. 15.

10 SUMMARY JUDGMENT STANDARD

11 Summary judgment is appropriate if the pleadings, discovery, and affidavits
12 demonstrate there is no genuine issue of material fact *and* that the moving party is
13 entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317,
14 323 (1986) (citing Fed. R. Civ. P. 56(c)). There is no genuine issue for trial unless
15 there is sufficient evidence favoring the nonmoving party for a jury to return a
16 verdict in that party's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250
17 (1986). The moving party has the burden of showing the absence of a genuine
18 issue of fact for trial. *Celotex*, 477 U.S. at 325. *See also Fair Hous. Council of*
19 *Riverside Cnty., Inc. v. Riverside Two*, 249 F.3d 1132, 1136 (9th Cir. 2001)
20 ("[W]hen parties submit cross-motions for summary judgment, each motion must
21 be considered on its own merits.").

22 When considering a motion for summary judgment, the Court neither
23 weighs evidence nor assesses credibility; instead, "[t]he evidence of the non-
24 movant is to be believed, and all justifiable inferences are to be drawn in his
25 favor." *Anderson*, 477 U.S. at 255. When relevant facts are not in dispute,
26 summary judgment as a matter of law is appropriate, *Klamath Water Users*
27 *Protective Ass'n v. Patterson*, 204 F.3d 1206, 1210 (9th Cir. 1999), but "[i]f
28

1 reasonable minds can reach different conclusions, summary judgment is
2 improper.” *Kalmas v. Wagner*, 133 Wn. 2d 210, 215 (1997).

3 ANALYSIS

4 Section 1983

5 Defendants move for summary judgment on Plaintiff’s § 1983 claim,
6 arguing that (1) the court lacks subject matter jurisdiction under the
7 *Rooker/Feldman* doctrine; (2) the claims are barred by res judicata and/or
8 collateral estoppel; (3) Defendants are not “persons” under 42 U.S.C. §1983 and
9 that negligence is not sufficient to sustain an action under § 1983; (4)
10 prosecutorial and/or quasi-judicial immunity; and (5) qualified immunity. Because
11 Plaintiff conceded at oral argument that no Defendant is properly subject to
12 liability under § 1983, Defendants’ remaining arguments are not considered.

13 A § 1983 claim requires two essential elements; “(1) the conduct that harms
14 the plaintiff must be committed under color of state law (i.e., state action), and (2)
15 the conduct must deprive the plaintiff of a constitutional right.” *Ketchum v.*
16 *Alameda County*, 811 F.2d 1243, 1245 (9th Cir. 1987). Parties to a § 1983 suit are
17 entitled to immunities that existed at common law. *Beltran v. Santa Clara County*,
18 514 F.3d 906, 908 (9th Cir. 2008). “Section 1983 provides a federal forum to
19 remedy many deprivations of civil liberties, but it does not provide a federal forum
20 for litigants who seek a remedy against a State for alleged deprivations of civil
21 liberties.” *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 65-66 (1989). The
22 Eleventh Amendment bars such suits unless the State has waived its immunity or
23 Congress expresses intent to override that immunity. *Id.* at 66. It is well settled
24 that “neither a State nor its officials acting in their official capacities are ‘persons’
25 under § 1983,” and, thus, cannot be subject to § 1983 liability. *Id.* at 71.

26 Fisher has named the State of Washington, Washington State DSHS, and
27 Washington State CPS, Division of Child and Family Services, as Defendants in
28 this lawsuit. He has also sued individual Defendant Wright and individual

1 Defendant Petrie in their official capacities. At oral argument, Plaintiff conceded
2 that the State and its agencies are not persons for § 1983 purposes, and further
3 admitted that Wright and Petrie were sued only in their official, not individual,
4 capacities, which is equivalent to suing the State itself under a § 1983 analysis. As
5 it is well established that all Defendants are not “persons” under prevailing law,
6 they are immune from § 1983 liability. Accordingly, all § 1983 claims are
7 dismissed as a matter of law.

8 **Negligence**

9 Fisher further claims that Defendants were negligent because L.F.
10 contracted MRSA while in Petrie’s care. Negligence requires proof of four
11 elements: duty, breach, causation, and damages. *Hertog v. City of Seattle*, 138
12 Wn.2d 265, 275 (1999). Plaintiff’s negligence allegations must likewise fail
13 because there is no genuine issue of material fact regarding the elements of breach
14 and proximate cause. Plaintiff has proffered no evidence supporting his
15 contentions that Defendants Wright or Petrie were at fault for L.F. contracting
16 MRSA. Indeed, there is no evidence in the record before the Court as to when or
17 where L.F. developed MRSA. Because Plaintiff has not established a genuine
18 issue of material fact as to his claim that Wright and Petrie were negligent for
19 allowing L.F. to contract MRSA, Defendants’ motion for summary judgment is
20 granted.

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Accordingly, **IT IS HEREBY ORDERED:**

1. Defendants' Motion for Summary Judgment, ECF No. 13, is
GRANTED.

2. Judgment shall be entered in favor of Defendants.

3. All previously set court dates, including the trial date, are **STRICKEN.**

IT IS SO ORDERED. The District Court Executive is hereby directed to
file this Order, enter judgment, provide copies to counsel, and **close** this file.

DATED this 21st day of February 2017.



A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

Stanley A. Bastian
United States District Judge